

IN THE CLAIMS:

Please cancel claims 14-16 without prejudice to the prosecution of this subject matter in a separate patent application.

REMARKS

Claims 1-13 and 17-22 are pending.

Claims 14-16 are cancelled in response to the Examiner's restriction requirement of September 26, 2002. Claim 14-16 have been cancelled without prejudice to the prosecution of this subject matter in a separate patent application.

The Examiner rejected claims 1-2, 8-9, 17, and 21-22 under the judicially-created doctrine of obviousness – type double patenting as being unpatentable over claims 1-4 of co-pending application Serial No. 09/746,658. Applicants respectfully traverse this rejection until such time as the Examiner has allowed a claim in the above-captioned application.

The Examiner rejected claims 1-3, 8-13 and 17-22 as obvious under 35 U.S.C. 103(a) over the disclosure of U.S. Patent No. 6,261,271 to Solomon et al. ("the '271 Patent"). According to the Examiner, the '271 Patent discloses an anti-infective medical article containing chlorhexidine bulk distributed throughout a polyurethane base layer and a coating layer on the base layer containing chlorhexidine, an antibiotic, antithrombogenic agent or polymeric surface layer laminated into the base layer. The Examiner admits that the '271 Patent does not disclose the weight/weight ratio of

chlorhexidine free base and water-soluble chlorhexidine salt in solution between the 1:1 to 1:5 percent. According to the Examiner, a person of ordinary skill in the art would have determined a suitable weight percentage of chlorhexidine free-base and water-soluble chlorhexidine salt when coating a medical article according to the '271 Patent. Applicants respectively disagree.

In response, it is pertinent to note that the cited '271 Patent is a continuation application of U.S. Patent Nos. 5,165,952 and 5,451,424, which relate to medical articles made with chlorhexidine both coated on and bulk distributed throughout medical articles. Both the '952 and '424 Patents are discussed in the instant specification at page 3, lines 3-7, which states that when chlorhexidine is bulk distributed it adversely affects certain characteristics of the device such as tensile strength, and that the temperatures required for extension of plastics such as a polyurethane may damage the chlorhexidine. The '271 Patent, like the '952 and '424 Patents, does not disclose, teach or suggest an antimicrobial medical article prepared by treating a polymeric medical article with a solution consisting essentially of one or more solvents and a mixture of chlorhexidine free base and water-soluble chlorhexidine salt, wherein the weight/weight ratio of chlorhexidine free base and water-soluble chlorhexidine in solution is between 1:1 to 1:5 as specified in the claims. Applicants respectively request the Examiner to withdraw this rejection of claims 1-3, 8-13 and 17-22.

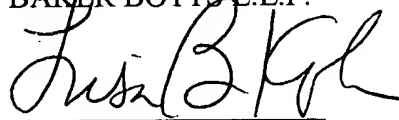
The Examiner rejected claims 1-13 and 17-22 under 35 U.S.C. 103(a) as being obvious over the '271 Patent and further view of the MERCK Index document. According to the Examiner, the '271 Patent teaches an anti-infective medical article

having chlorhexidine bulk distributed throughout a polyurethane base layer and may have a coating layer on the base layer. The Examiner admits that the '271 Patent does not disclose use of the solvent tetrahydrofuran. According to the Examiner, it would have been obvious to a person of ordinary skill on art to combine the disclosure of the '271 Patent with the disclosure founded in the MERCK Index relating to tetrahydrofuran as a solvent for high polymers. Applicants respectfully disagree.

The disclosure of the MERCK Index does not supply the lacking disclosure of the '271 Patent as discussed above. Specifically, neither reference discloses, teaches or suggests an antimicrobial medical article prepared by treating a polymeric medical article with a solution consisting essentially of one or more solvents and a mixture of chlorhexidine free base and a water-soluble chlorhexidine. Applicant respectfully requests the Examiner withdraw this rejection of claims 1-13 and 17-22.

Applicants believe that no fee is required. In the event a fee is required, the Commissioner is hereby authorized to charge any fee or credit any overpayment associated with this communication to Deposit Account No. 02-4377. Two copies of this page are enclosed.

Respectfully submitted,  
BAKER BOTTS L.L.P.



Lisa B. Kole  
PTO Reg. No. 35,225

Attorneys for Applicants  
(212) 408-2500